

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Jerry Passehl
513 160th Street
Latimer, IA 50452

**ADMINISTRATIVE
CONSENT ORDER**

2009-SW- 01
2009-WW- 01
2009-HC- 01

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Mr. Jerry Passehl have entered the following Administrative Consent Order (Order). Mr. Passehl agrees to properly dispose of contaminated soil located around both of his car crushers; remove all appliances from his property unless he obtains an appliance disposal permit; maintain the number of stored tires at 500 or below unless he obtains a waste tire stockpile permit; and pay an administrative penalty of \$3,000 to the order of the Iowa Department of Natural Resources. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Hopper and Michelle Johnson
Iowa Dept. of Natural Resources, FO#2
2300 15th Street S.W., PO Box 1443
Mason City, IA 50401
Ph: 641/424-4073

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III (water quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part I (solid waste) and Part IV (hazardous condition), and the rules adopted pursuant to those parts; and Iowa Code section 455B.109 and Department rules in Chapter 567 Iowa Administrative Code (I.A.C.) 10 which authorize the Director to assess administrative penalties up to \$10,000.

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III. STATEMENT OF FACTS

Mr. Passehl does not admit the allegations contained herein:

1. Mr. Passehl owns various properties in Franklin County, to include a salvage yard at 513 160th Street, Latimer, Iowa, 50452.
2. While investigating a yard fire at the site on June 13, 2003, Field Office (FO) #2 noted several violations and, accordingly, Mr. Passehl was issued a Notice of Violation (NOV) on June 18, 2003. This NOV required him to remove and properly dispose of contaminated soil; remove all appliances and stop accepting new appliances until he obtains an Appliance Demanufacturing Permit (ADP); and acquire a storm water NPDES General Permit No. 1 – which requires drafting a storm water Pollution Prevent Plan (PPP).
3. Mr. Passehl's salvage yard was visited by FO#2 personnel on September 25, 2003 to verify compliance with the June NOV's requirements. This visit was documented in a letter dated October 3, 2003. At this time he had not complied with the NOV.
4. Mr. Passehl applied for a storm water NPDES General Permit No. 1 in April 2004; its coverage extended until April 2005. It was renewed in May 2005, with coverage through April 2008.
5. On July 6, 2004 FO#2 received a complaint from the local sheriff office that Mr. Passehl's salvage yard had extensive oil contamination. FO#2 investigated on July 8, 2004 and noted several oil slicks along the property's access road, driveway, as well as gross contamination (pooled oil) beneath the car crusher. When FO#2 asked to see Mr. Passehl's PPP, he was unable to present it. As such, Mr. Passehl was issued a second NOV on July 9, 2004 for the oil contamination and for having an incomplete PPP. Additionally, FO#2's field notes from the July 8, 2004 visit noted that vegetation coverage made it impossible to estimate the number of tires on site, but that it appeared a large number were present. Mr. Passehl was informed of the 500 tire limit unless in possession of waste tire stockpile permit.
6. FO#2 visited Mr. Passehl's salvage yard to conduct a routine compliance inspection on March 24, 2006. This resulted in the issuance of a third NOV for oil contamination along the property's access road, driveway, and around the car crusher, as well as for having a still-incomplete PPP. Mr. Passehl was ordered to remedy these issues by July 2006.
7. Mr. Passehl was issued his fourth NOV on April 25, 2007 – again for oil contamination on the access road, driveway, and beneath and around the car crusher, the failure to have a completed PPP, and the failure to have an ADP and waste tire stockpile permit.
8. FO#2 inspected Mr. Passehl's property for compliance with the April NOV on August 6, 2007. Mr. Passehl had failed to comply with any of the NOV's requirements. Several oil

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9. spills remained on site. Pools of antifreeze, hydraulic fluids, and other unidentifiable contaminants were also noted on the ground. The PPP was still incomplete, and appliances (to include air conditioners, washers, and dryers)) were on site without the authorization of an ADP.
10. Mr. Passehl was informed in his fifth NOV dated August 20, 2007 that this case was being referred to the Department's Legal Services Bureau for enforcement action.

IV. CONCLUSIONS OF LAW

Mr. Passehl does not admit the following conclusions of law:

1. Iowa Code chapter 455B, Division IV, Part 4 (sections 455B.381 – 455B.399) establishes the Hazardous Condition program. The purpose of the program is to “prevent, abate, and control the exposure of the citizens of the state to hazardous conditions” IOWA CODE § 455B.382.
2. A hazardous condition is created based upon the “actual, imminent, or probable spilling, leaking or release” of a “hazardous substance” into the environment” IOWA CODE § 455B.381(4); 567 I.A.C. 131.1.
3. A “hazardous substance” means “any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant” IOWA CODE § 455B.381. “[I]ndustrial chemicals . . . [and] petroleum products” are examples of hazardous substances. 567 I.A.C. 131.1.
4. Therefore, the oil, hydraulic fluid, and antifreeze found pooled on the ground and in the soil at Mr. Passhel's property qualify as hazardous substances under the law, and their release into the environment created a hazardous condition.
5. The party “storing, handling, . . . or disposing of a hazardous substance” must notify the Department and local police department of the occurrence of a hazardous condition as soon as possible, but no later than six (6) hours after the onset of the hazardous condition or its discovery, and the failure to do so subjects the party to a civil penalty of \$1,000. See IOWA CODE § 455B.386 and 567 I.A.C. 131.2.
6. Mr. Passehl has never notified the Department of the release of oil, hydraulic fluids, or antifreeze at his property. The oil spills at issue in the second, third, and fourth NOV's issued to Mr. Passehl, as well as the hydraulic fluid and antifreeze addressed in the fifth NOV, were either reported to the Department by a third party or were discovered by the Department upon a site inspection.

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7. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 I.A.C. 100 through 121.
8. 567 I.A.C. 117.3(1) prohibits the "land disposal of waste tires [unless it is] at a permitted sanitary landfill" To ensure that improper land disposal is not occurring,

"[n]o business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile" *Id.* at 117.4(1).
9. The four NOVs issued between 2003 and 2007 contained a violation of the waste tire stockpile permit provision.
10. 567 I.A.C. 118.2(1) prohibits any person from disposing or recycling an appliance until it has been properly demanufactured. A person cannot demanufacture an appliance without first obtaining an ADP from the Department. *Id.* at 118.2(2).
11. "Appliances" is defined to include "air-conditioning units . . . clothes washers, [and] clothes dryers" 567 I.A.C. 118.3.
12. The above-stated facts demonstrate noncompliance with this provision as Mr. Passehl has had, since at least 2003, numerous appliances deposited in his salvage yard – to include air conditioners, washers, and dryers – without the authorization of an ADP.
13. Iowa Code chapter 455B, Division III, Part I (sections 455B.171 - 455B.198) establishes the Water Quality program. Section 455B.177 declares that it is in the interest of the people of Iowa to implement the Clean Water Act and its accompanying federal regulations and guidelines – which include the issuance of permits regulating the discharge of pollutants into waters of the State.
14. Iowa Code section 455B.173 provides that the Commission shall develop comprehensive plans and programs for the prevention, control, and abatement of water pollution. The Commission has adopted such rules at 567 I.A.C. chapters 60-69 relating to water quality.
15. 567 I.A.C. 64.3 prohibits a person from operating any wastewater disposal system or part thereof in "contrary to any condition of an operation permit issued by the director."
16. Part III-C of the NPDES General Permit No. 1 issued to Mr. Passehl by the Department requires the creation of a "storm water pollution prevent plan" (PPP). The PPP is required to be "completed before the Notice of Intent is submitted to the Department," which occurred in this case in April 2004. *Id.* at Part III-C(1). Additionally, the "owner or operator of a facility with a storm water discharge . . . permit shall make plans available upon request by the Department." *Id.* at Part III-C(2)"b".

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17. The above-stated facts set out Mr. Passehl's noncompliance with his permit. After receiving his NPDES permit in April 2004, it took Mr. Passehl four years to complete his PPP.

V. ORDER

THEREFORE, the Department hereby orders and Mr. Passehl agrees to the following:

1. Mr. Passehl shall evacuate any and all remaining contaminated soil around both car crushers and dispose of it in a sanitary landfill; Mr. Passehl shall submit disposal receipts proving he has done so within 30 days of this Order.
2. Mr. Passehl shall properly dispose of all discarded appliances at his property at an approved landfill or recycling center, and submit receipts to the Department within 30 days of this Order to prove he has done so. Additionally, Mr. Passehl shall not accept any appliances in the future unless he obtains an ADP.
3. Mr. Passehl shall ensure that he does not have more than 500 passenger tire equivalents on his property unless he obtains a waste tire stockpile permit. In the future, Mr. Passehl shall maintain separate tire piles for "waste tires" and "used" tires for ease of volume assessment, organizing his current tire inventory in this manner to the maximum extent practical.
4. Mr. Passehl shall pay an administrative penalty of \$3,000 to the order of the Iowa Department of Natural Resources within 60 days after issuance of this Order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 455B.307 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of noncompliance for the water quality violations and illegal solid waste disposal involved in this matter. More serious criminal sanctions are also available pursuant to those provisions.
2. Iowa Code sections 455B.175, 455B.307, and 455B.109 authorize the enforcement of water quality standards and solid waste compliance through the issuance of an administrative order and an accompanying penalty up to \$10,000. The Commission established procedures and criteria for the assessment of administrative penalties in 567 I.A.C. Chapter 10. Pursuant to those rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Consent Order with a penalty.

ECONOMIC BENEFIT: Mr. Passehl's economic benefit for not complying with Department rules is based upon the following considerations: the costs saved by avoiding labor, hauling, and tipping fee costs associated with proper disposal of contaminated soil, tires, and

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appliances; the costs saved by not conducting annual storm water monitoring and reporting as required by his permit; and the money saved by not obtaining an ADP – which requires the applicant to complete demanufacturing training at personal expense. As such, \$500 is assessed for this factor.

GRAVITY: Significant environment impact occurred at Mr. Passehl's property due to the release of hazardous substances on a fairly regular basis: the facts show that oil pools were present at every Department site inspection between 2004 and 2007. Most recently, pools of hydraulic fluid and antifreeze were also present on the ground. This resulted in contaminated soil, potentially contaminated groundwater, and the death of vegetation in the area. Accordingly, \$500 is assessed for this factor.

CULPABILITY: Mr. Passehl has a well-documented four-year history of violations. Mr. Passehl has been made aware of all applicable Department rules since 2003 through Department staff site visits, letters, and NOV's. It is irrefutable that Mr. Passehl has been repeatedly informed of the violations at hand, the remedy required, and the time frame in which to comply; his ongoing noncompliance is willful. Therefore, \$1,000 is assessed for this factor.

HAZARDOUS CONDITION: Iowa Code section 455B.396 and 567 I.A.C. 10.2(4) authorizes the administrative assessment of a \$1,000 penalty for the failure to comply with hazardous condition notification requirements.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.178, 455B.308, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the director or the Commission. This Order is entered into knowingly by and with the consent of Mr. Passehl. By signing this Order all rights to appeal this Order are waived.

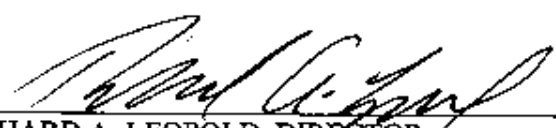
VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.191 and 455B.307.

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JERRY PASSEHL

Dated this 5 day of Dec, 2008


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 22 day of Jan, 2009

Jerry Passehl: Field Office 2; Jeff Vansteenburgh; Dennis Ostwinkle; Dan Stipe; David Hopper;
Michelle Johnson; I.B(1)(a); I.C(7)(b); IV.A; VLC